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National FOIA Office
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W. (2310A)
Washington, D.C. 20460

RE: Freedom of Information Act Request, Request for Expedited Processing, and Fee Waiver Request

Dear FOIA Officer:

This request is made pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and 40 C.F.R. pt. 2, on behalf of Ecological Rights Foundation (“EcoRights”). Consistent with its mission, EcoRights hereby requests copies of the following records,¹ from the Environmental Protection Agency (“EPA”). **Note that these records are requested from January 20, 2017 (President Trump’s inauguration) up to and including the date that EPA issues a determination for this request unless otherwise noted:**

1. All records that EPA relied on for the factual assertions in the attached letter from EPA Administrator Andrew Wheeler to California Governor Gavin Newsom (“the Letter”) related to exceedances of National Pollution Discharge Elimination System (“NPDES”) permits and health-based exceedances of the Safe Drinking Water Act (“SDWA”) (both discussed on page 3 of the Letter).
2. Any correspondence responding to the Letter from any of the entities listed on page 3 of the Letter and/or the State of California or any of its agencies or representatives.
3. All records that reflect whether the NPDES and SDWA exceedances discussed on page 3 of the Letter did in fact occur, such as discharge monitoring reports submitted pursuant to

¹ This request defines “records” broadly to include all documents, books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics. “Documents,” as used herein, refers to paper documents and/or electronically stored information, including writings, correspondence, emails, records of phone conversations, notes, meeting minutes, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations, stored in any medium.

NPDES monitoring requirements or consumer confidence reports submitted pursuant to SDWA reporting requirements.

4. All records that document, establish, and/or reflect whether EPA and/or the State of California has undertaken any enforcement action against the entities alleged to have exceeded their NPDES permits or to have been responsible for health-based exceedances of the SDWA, as discussed on page 3 of the Letter.
5. All records providing evidence of any remedial measures undertaken by the entities discussed on page 3 of the Letter to address, reduce, or eliminate the NPDES permit or SDWA violations discussed in the Letter.
6. All records of communications between EPA and the City of Los Angeles, University of Southern California, and/or Sanitary District Number 5 of Marin County otherwise addressing, referring to, or discussing the exceedances of NPDES permits discussed on page 3 of the Letter.
7. All records of communications between EPA and the entities alleged to have been responsible for health-based exceedances of the SDWA addressing, referring to, or discussing such exceedances discussed on page 3 of the Letter.
8. All records constituting or discussing any request from an EPA political appointee or White House official to EPA staff asking them to itemize NPDES permit condition noncompliance and/or SDWA noncompliance.
9. All records provided in response to any request from an EPA political appointee or White House official to EPA staff asking them to itemize NPDES permit condition noncompliance and/or SDWA noncompliance, including but not limited to records memorializing that information or constituting staff requests for more guidance on the nature of the information requested.
10. All drafts of the Letter.
11. All emails accompanying any drafts of the Letter, including emails explaining, commenting on, or suggesting revisions to the Letter and including any factual corrections to the Letter.
12. All records dated September 26, 2019 or later explaining EPA's rationale for sending the Letter, including records addressing to which EPA campaign or policy initiative (if any) the Letter is germane.
13. All other letters sent to officials in other states (*i.e.*, states other than California) warning them of entities that have exceeded their NPDES permits or that have been responsible for health-based exceedances of the SDWA.
14. All records that document, establish, or reflect that EPA is drafting other letters to other state officials (*i.e.*, officials other than those in California) warning them of entities that have exceeded their NPDES permits or that have been responsible for health-based exceedances of the SDWA.

EcoRights requests all records dated before fulfillment of this FOIA request. Please tender responsive records in digital format whenever possible.

* * *

Please provide us with a determination on our request for expedited processing within 10 calendar days as required by FOIA. 5 U.S.C. § 552(a)(6)(E)(ii)(I); *see also* 40 C.F.R. § 2.104(f)(4). If you deny our request for expedited processing and do not provide a determination

and production of records sooner, please inform us of the basis for your denial and identify and inform us of all responsive or potentially responsive records within the 20 working days as required by FOIA, 5 U.S.C. § 552(a)(6)(A)(i), and the basis of any claimed exemptions or privilege, including the specific responsive or potentially responsive records(s) to which such exemption or privilege may apply. *See Citizens for Responsibility and Ethics in Wash. v. Federal Election Comm’n*, 711 F.3d 180, 182-83 (D.C. Cir. 2013) (holding that the agency must identify the exemptions it will claim with respect to any withheld documents within the time frame prescribed by FOIA). The Supreme Court has stated that FOIA establishes a “strong presumption in favor of disclosure” of requested information, and that the burden is on the government to substantiate why information may not be released under FOIA’s limited exemptions. *Dep’t of State v. Ray*, 502 U.S. 164, 173 (1991). Congress affirmed these tenets of FOIA in legislation as recently as December 2007, stating that government remains accessible to the American people and “is always based not upon the ‘need to know’ but upon the fundamental ‘right to know.’” Pub. L. No. 110-175, 121 Stat. 2524, 2525 (Dec. 31, 2007).

If your office takes the position that any portion of the requested records is exempt from disclosure, we request that you provide us with an index of those records as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.” *Founding Church of Scientology v. Bell*, 603 F.2d 945, 959 (D.C. Cir. 1979). A *Vaughn* index must (1) identify each document or portion of document withheld; (2) state the statutory exemption claimed; and (3) explain how disclosure of the document or portion of document would damage the interests protected by the claimed exemption. *See Citizens Comm’n on Human Rights v. FDA*, 45 F.3d 1325, 1326 n.1 (9th Cir. 1995). “The description and explanation the agency offers should reveal as much detail as possible as to the nature of the document,” in order to provide “the requestor with a realistic opportunity to challenge the agency’s decision.” *Oglesby v. U.S. Dep’t of Army*, 79 F.3d 1172, 1176 (D.C. Cir. 1996). Such explanation will be helpful in deciding whether to appeal a decision to withhold documents and may help to avoid unnecessary litigation.

In the event that some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable, non-exempt portions of the requested records. *See* 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments and that those non-exempt segments are so dispersed throughout the documents as to make segregation impossible, please state what portion of the document is non-exempt and how the material is dispersed through the document. *See Mead Data Cent. v. U.S. Dep’t of the Air Force*, 455 F.2d 242, 261 (D.C. Cir. 1977). Claims of non-segregability must be made with the same detail as required for claims of exemption in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

FOIA requires federal agencies to make their records “promptly available” to any person who makes a proper request for them. 5 U.S.C. § 552(a)(3)(A) (as amended by OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524).

Presumption of Openness and “Foreseeable Harm” Standard

On his first full day in office President Obama demonstrated his commitment to the ideals of transparency and openness by issuing a Memorandum to the heads of all Executive Branch Departments and agencies by calling on them to “renew their commitment to the principles embodied in FOIA.” *See* Presidential Memorandum for Heads of Executive Departments and Agencies Concerning the FOIA, 74 Fed. Reg. 4683 (Jan. 21, 2009). The President directed all agencies to administer the FOIA with a clear presumption in favor of disclosure, to resolve doubts in favor of openness, and to not withhold information based on “speculative or abstract fears.” *Id.* In addition, the President called on agencies to respond to requests in “a spirit of cooperation,” that disclosures are made timely, and that modern technology is used to make information available to the public even before a request is made. *Id.*

In accordance with the President’s directives, on March 19, 2009, Attorney General Holder issued new FOIA guidelines, calling on all agencies to reaffirm the government’s “commitment to accountability and transparency.” Memorandum from Att’y Gen. Eric Holder for Heads of Executive Departments and Agencies (Mar. 19, 2009), *available at* <http://www.justice.gov/ag/foia-memo-march2009.pdf>. The Guidelines stress that the FOIA is to be administered with the presumption of openness called for by the President. *Id.* at p. 1.

The Attorney General “strongly encourage[d] agencies to make discretionary disclosures of information.” *Id.* He specifically directed agencies not to withhold information simply because they may do so legally and to consider making partial disclosures when full disclosures are not possible. *Id.* He also comprehensively addressed the need for each agency to establish effective systems for improving transparency. *Id.* at p. 2. In doing so he emphasized that “[e]ach agency must be fully accountable for its administration of the FOIA.” *Id.*

In issuing these new guidelines, Attorney General Holder established a new “foreseeable Harm” standard for defending agency decisions to withhold information. Under this new standard, the U.S. Department of Justice will defend an agency’s denial of a FOIA request “only if (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions, or (2) disclosure is prohibited by law.” *Id.* As a result, “agencies must now include the ‘foreseeable harm’ standard as part of the FOIA analysis at the initial request stage and the administrative appeal stage.” Department of Justice Guide to the FOIA (2009), p. 25, available at http://www.justice.gov/oip/foia_guide09.htm.

This presumption of openness was enshrined in law when Congress passed, and President Obama signed, the FOIA Improvement Act of 2016, Pub. L. No. 114-185, which added a new section to FOIA that states:

- (8)(A) An agency shall –
 - (i) withhold information under this section only if –
 - (I) the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b); or
 - (II) disclosure is prohibited by law; and

(ii)(I) consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible; and

(II) take reasonable steps necessary to segregate and release nonexempt information...

5 U.S.C. § 552(a)(8).

Request for Expedited Processing

FOIA provides for, and requires EPA to promulgate regulations addressing, expedited processing of FOIA requests “in cases in which the person requesting the records demonstrates a compelling need” and “in other cases determined by the agency.” 5 U.S.C. § 552(a)(6)(E)(i). A “compelling need” means “that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual” or, “with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v). Compelling need is demonstrated by “a statement certified by such person to be true and correct to the best of such person’s knowledge and belief.” 5 U.S.C. § 552(a)(6)(E)(vi). EPA’s response to a motion for expedited processing is due within 10 calendar days. 5 U.S.C. § 552(a)(6)(E)(ii)(I). EPA must process requests for which it has granted expedited processing as expeditiously as practicable. 5 U.S.C. § 552(a)(6)(E)(iii).

EcoRights submits this request for expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E)(v) and 40 C.F.R. § 2.104(f)(1)(i) because the records relate to a situation that could “reasonably be expected to pose an imminent threat to the life or physical safety of an individual.” I certify that the statements herein are true and correct to the best of my knowledge and belief. 5 U.S.C. § 552(a)(6)(E)(vi). The records at issue here relate to EPA’s allegations that California has failed to adequately protect Californians from water pollution and that these failures are subjecting Californians to significant health concerns, including increased risk of cancer, exposure to heavy metals and other toxic substances, and unsafe drinking water, all in excess of legal standards. This is clearly sufficient to show that a delay in providing these records to EcoRights, and the public, could “reasonably be expected to pose an imminent threat to the life or physical safety of an individual.” 5 U.S.C. § 552(a)(6)(E)(v); 40 C.F.R. § 2.104(f)(1)(i). Indeed, if EPA is correct, this may pose a threat to hundreds of thousands of individuals. It is important for the public to have the information EPA relies on for these statements to evaluate, and, if necessary, avoid and correct the threats that EPA identifies.

EPA states that it

is concerned that California’s implementation of federal environmental laws is failing to meet its obligations required under delegated federal programs. The cost of this failure will be paid by those Californians exposed to unhealthy air and degraded water. The purpose of this letter is to outline the deficiencies that have led to *significant public health concerns in California* and to outline steps the

state must take to address them.

The Letter at 1 (emphasis added). EPA states that California has created significant public health concerns in the programs that it operates through cooperative federalism with EPA. This indicates a potential failure of both California and the EPA to protect many individuals within California.

As a result of water pollution issues that EPA identifies in the Letter, EPA has decided that it needs to provide more oversight of California's implementation of the Clean Water Act, stating,

we are aware of numerous exceedances of state-issued National Pollutant Discharge Elimination System permits under section 402 of the CWA. Just in this past quarter, we identified 23 significant instances of discharges into waters of the United States in exceedance of permit limits. By way of example, the City of Los Angeles exceeded its permit limit for Indeno[1,2,3-cd]pyrene (*a contaminant which is reasonably anticipated to be a human carcinogen*) by 442 percent; the University of Southern California exceeded its permit limit for copper (*a metal which can adversely affect human health and the health of aquatic life*) by 420 percent; and Sanitary District Number 5 of Marin County exceeded its permit limit for total cyanide by 5,194 percent. *These are serious matters that warrant a strong review by California.*

The Letter at 3 (emphasis added). EPA identifies discharges of pollution into water of the United States far in excess of NPDES standards. EPA identifies that these pollutants are likely human carcinogens and toxic substances that can adversely affect human health and that these discharges are "serious matters." This clearly indicates that EPA believes these discharges represent a threat to the life and/or physical safety of individuals.

EPA has also states that it

has concerns about CalEPA's administration and oversight of SDWA programs and public water systems within the state. Indeed, we are aware of numerous recent health-based exceedances: in just the most recent reporting quarter of 2019, California had 202 Community Water Systems with 665 health-based exceedances that put the drinking water of nearly 800,000 residents at risk. These exceedances include:

- 67 systems with 194 serious health-based exceedances of arsenic levels, impacting more than 101,000 residents;
- 210 lead action level exceedances in just the most recent 3-year interval at 168 PWSs, impacting more than 10,000 residents;
- two systems with serious Ground Water Rule compliance issues, impacting more than 250,000 residents;
- 44 systems with 154 exceedances of the Stage 1 and 2 disinfection byproduct regulations, impacting almost 255,000 residents; and

- 25 systems with 69 violations of radiological standards, impacting almost 12,000 residents.

These exceedances call into question the state's ability to protect the public and administer its SDWA programs in a manner consistent with federal requirements.

The Letter at 3. EPA has fundamentally called California's management of safe drinking water into question. EPA says these violations of the SDWA threaten 800,000 Californians in just the last quarter of 2019 alone. These threats include exposure to lead, arsenic, and radioactive material. Again, this clearly indicates that EPA believes these SDWA violations represent a threat to the life and/or physical safety of hundreds of thousands of individuals.

EPA was so concerned about these violations of the law that it required that California respond to the Letter within 30 days, "outlining in detail how California intends to address the concerns and violations identified herein. This response should include a demonstration that the state has the adequate authority and capability to address these issues and specific anticipated milestones for correcting these problems." The Letter at 4. EPA's urgency in having California respond to the Letter indicates that it believes this is a pressing issue requiring urgent response. Similarly, providing the public with the records needed to assess the extent of these threats and to address them is an urgent matter requiring an urgent response. As a result, EcoRights requests that EPA grant this FOIA request expedited processing and that it process this request and produce all requested records as expeditiously as practicable.

Request for Fee Waiver

FOIA was designed to grant a broad right of access to government information, with a focus on the public's "right to be informed about what their government is up to," thereby "open[ing] agency action to the light of public scrutiny." *U.S. Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773-74 (1989) (internal quotation and citations omitted). A key component of providing public access to those records is FOIA's fee waiver provision, 5 U.S.C. § 552(a)(4)(A)(iii), which provides that "[d]ocuments shall be furnished without any charge or at a [reduced] charge . . . if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."

FOIA's fee waiver requirement is to be "liberally construed." *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003); *Forest Guardians v. U.S. Dep't of the Interior*, 416 F.3d 1173, 1178 (10th Cir. 2005). The fee waiver amendments of 1986 were designed specifically to provide organizations such as EcoRights access to government documents without the payment of fees. As one Senator stated, "[a]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information . . ." 132 Cong. Rec. S. 14298 (statement of Senator Leahy). Indeed, FOIA's waiver provision was intended "to prevent government agencies from using high fees to discourage certain types of requesters and requests, in clear reference to requests from journalists, scholars, and . . . non-profit public interest groups." *Better Gov't Ass'n v. Dep't of State*, 780 F.2d 86, 93-94 (D.C. Cir. 1986) (quoting *Ettlinger v. FBI*, 596 F. Supp. 867, 876 (D. Mass. 1984)).

EcoRights, a non-commercial requester, hereby requests a waiver of all fees associated with this request because disclosure “is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R § 2.107(l)(1). This request satisfies both statutory and regulatory requirements for granting a fee waiver, including fees for search, review, and duplication.² Below, stated first in bold, are the criteria EPA considers under its new regulations in assessing requests for fee waivers, followed by an explanation of EcoRights’ satisfaction of those requirements. See 40 C.F.R § 2.107(l).³ Fee waiver requests must be evaluated based on the face of the request. See *Citizens for Responsibility & Ethics in Wash. v. U.S. Dep’t of Justice*, 602 F. Supp. 2d 121, 125 (D.D.C. 2009).

- (1) The subject of the request: Whether the subject of the requested records concerns “the operations or activities of the government.” The subject of the requested records must concern identifiable operations or activities of the Federal government, with a connection that is direct and clear, not remote.**

The requested records concern EPA’s cooperative federalism implementation of both the Clean Water Act and the Safe Drinking Water Act. The records also concern EPA’s letter to California outlining alleged violations of these laws and EPA’s basis for those allegations. The subject matter of the requested records directly and specifically concerns identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote.

The Department of Justice Freedom of Information Act Guide expressly concedes that “in most cases records possessed by federal agency will meet this threshold” of identifiable operations or activities of the government. See Department of Justice Guide to the FOIA (2009), p. 25. This requirement is clearly met in this case.

- (2) The informative value of the information to be disclosed: Whether the disclosure is “likely to contribute” to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be “likely to contribute” to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding when nothing new would be added to the public’s understanding.**

² Pursuant to FOIA, 5 U.S.C. § 552(a)(4)(A)(iv), no fee may be charged for the first two hours of search time or for the first one hundred pages of duplication.

³ See also *Department of Justice Fee Waiver Guidance to Agency Heads From Stephan Markman, Assistant Att’y Gen.* (Apr. 2, 1987) (advising agencies of factors to consider when construing fee waivers), available at http://www.justice.gov/oip/foia_updates/Vol_VIII_1/viii1page2.htm.

The requested records are meaningfully informative about government operations or activities and are “likely to contribute” to an increased public understanding of those operations or activities. The records requested will provide us with the ability to communicate to the public about EPA’s cooperative implementation of the Clean Water Act and Safe Drinking Water Act in California and about the underlying basis for EPA’s letter to California questioning its implementation of those laws. The actions and assessments of the EPA regarding this issue are of concern to the public. Disclosure of the requested records will enhance the public’s knowledge of these issues and support public oversight of federal agency operations. These records will also illuminate in a clear and direct way, the operations and activities of the EPA to fulfill important Congressional mandates under environmental laws. There is a logical connection between the content of the records we have requested and the Government’s operations and activities related to protection of human health and the environment.

Furthermore, the information being requested is new. Although the full contents of the information requested are currently unknown to us, EcoRights does not request any documents previously provided to us by the Government. The information EcoRights is requesting is not, to our knowledge, publicly available. The Government may omit sending us requested records that are available in publicly accessible forums such as on the internet or in published materials that are routinely available at public or university libraries so long as the Government provides us with adequate references and/or website links so that we may obtain these materials on our own. However, the requested materials will otherwise not be available unless we receive them from the Government in response to this FOIA request.

- (3) The contribution to an understanding of the subject by the public is likely to result from disclosure: Whether disclosure of the requested information will contribute to “public understanding.” The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester’s expertise in the subject area and ability and intention to effectively convey information to the public will be considered.**

Disclosure of the records will promote the understanding of the general public in a significant way because EcoRights will analyze the information and make its conclusions known to our members, other environmental groups nationwide, and the public at large via press releases, newsletters, and by posting our analyses of the information on one or more internet web sites or citizen group email broadcast “systems,” such as the Clean Water Action Network. EPA has brought these Clean Water Act and Safe Drinking Water Act violations to the attention of the public and the media, generating significant public interest and concern. The documents requested are expected to shed light on the facts that EPA relied on when making these contentions and the basis for the claims in the Letter, issues of great public concern. Because EcoRights has the intention to analyze these records and disseminate the contents to its membership and the public at large, this requirement is easily met.

These activities publicizing and distributing information received through FOIA requests demonstrate EcoRights’ intention to disseminate the information to the public with the goal of disclosing material that will inform, or has the potential to inform, the public. *See also Forest*

Guardians v. U.S. Dep't of the Interior, 416 F.3d 1173, 1180 (10th Cir. 2005) (finding an online newsletter and maintenance of a website sufficient to show how the requester will disseminate information); *Federal CURE v. Lappin*, 602 F. Supp. 2d 197, 203-04 (D.D.C. 2009) (finding public interest organization's "website [and] newsletter . . . are an adequate means of disseminating information," and noting the organization's "stature as [an] advocacy group . . . len[t] credence" to its dissemination argument). EcoRights will use the information obtained through this FOIA request in the methods described herein, therefore it will contribute to "public understanding."

- (4) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities. The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent. FOIA Offices will not make value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is "important" enough to be made public.**

Disclosure of the requested information will significantly contribute to public understanding of government operations. Specifically, the information will demonstrate the extent that EPA has been effective in its cooperative implementation of the Clean Water Act and Safe Drinking Water Act and the basis for its statements about significant issues with implementation of these laws in California. Because the public does not currently have the information necessary to assess these issues, this criterion is met.

Threats to our environment such as water and air pollution adversely affect millions of people throughout the United States, and adequate, efficient implementation and enforcement of environmental laws is critical for the public health of millions. EcoRights has a demonstrated ability to disseminate the beneficial and problematic features of government activities to a wider public audience, by litigation as well as the other means. Factors indicating an ability to disseminate information to the public include publication on an organization website and the ability to obtain media coverage. *Judicial Watch v. Rossotti*, No. 02-5154, 2003 WL 2003805 (D.C. Cir. May 2, 2003).

EcoRights' analyses will be disseminated via press releases as well as posted on EcoRights' web site (<http://www.ecorights.org>) and likely the web sites of other environmental groups. EcoRights has a proven track record of obtaining press coverage of the environmental issues it publicizes. Generally, EcoRights obtains press coverage in the local and national media, including newspapers and radio stories. For example, EcoRights received significant press coverage in response to its eight-year legal battle with Pacific Gas and Electric Company ("PG&E") to halt the discharge of toxic chemicals from PG&E's utility poles into San Francisco and Humboldt Bays. This included stories in general circulation publications like the San

Francisco Chronicle,⁴ environmentally-focused publications like the Beyond Pesticides Daily News Blog,⁵ general circulation legal industry publications like Bloomberg Law,⁶ and academic journals like the Environmental Law Review from Lewis & Clark Law School.⁷ As part of this litigation, EcoRights obtained a precedent-setting legal victory in the U.S. Court of Appeals for the Ninth Circuit, which earned its legal team a nomination for the 2019 Public Justice Trial Lawyer of the Year Award.⁸

(5) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.

EcoRights is a community-based educational nonprofit corporation committed to the protection, preservation, and restoration of the environment and endangered and threatened species. Incorporated in 1997, EcoRights has been devoted to furthering the rights of all people to a clean, healthful, and biologically diverse environment for over 20 years. To further EcoRights' environmental advocacy goals, EcoRights actively seeks federal and state agency

⁴ "PG&E agrees in settlement to protect S.F. Bay from chemical runoff from utility poles," San Francisco Chronicle (Sept. 11, 2018), *available at* <https://www.sfchronicle.com/science/article/PG-E-agrees-to-protect-S-F-Bay-from-chemical-13221486.php#photo-12306742> (last visited Sept. 23, 2019); "Settlement in Lawsuit Over Cancer-Causing Dioxin Runoff from PG&E Utility Poles," CBS SF Bay Area (Sept. 11, 2018), *available at* <https://sanfrancisco.cbslocal.com/2018/09/11/settlement-in-lawsuit-over-cancer-causing-dioxin-runoff-from-pge-utility-poles/> (last visited Sept. 23, 2019); "PG&E Agrees to Settlement to Reduce Dioxin Runoff into Bays, Waterways," SFGate (Sept. 11, 2018), *available at* <https://www.sfgate.com/news/bayarea/article/Pg-E-Agrees-To-Settlement-To-Reduce-Dioxin-Runoff-13222439.php> (last visited Sept. 23, 2019).

⁵ "Settlement Reached in Lawsuit Over Dioxin Contamination from Poison Poles in Central California," Beyond Pesticides (Sept. 14, 2018), *available at* <https://beyondpesticides.org/dailynewsblog/2018/09/settlement-reached-in-lawsuit-over-dioxin-contamination-from-poison-poles-in-central-california/> (last visited Sept. 23, 2019).

⁶ "PG&E Settles Suit Over Leaching Utility Poles," Bloomberg Law (Sept. 12, 2018), *available at* <https://news.bloomberglaw.com/product-liability-and-toxics-law/pg-e-settles-suit-over-leaching-utility-poles> (last visited Sept. 23, 2019); "Ninth Circuit Paves Way for Regulation of Stormwater Discharges Under RCRA," Perkins Coie legal update (Nov. 7, 2017), *available at* <https://www.perkinscoie.com/en/news-insights/ninth-circuit-paves-way-for-regulation-of-stormwater-discharges.html> (last visited Sept. 23, 2019).

⁷ Case Note, *Ecological Rights Foundation v. Pacific Gas & Electric Co.*, 874 F.3d 1083 (9th Cir. 2017), *Environmental Law* (2017), *available at* <https://elawreview.org/case-summaries/ecological-rights-foundation-v-pacific-gas-electric-co-874-f-3d-1083-9th-cir-2017/> (last visited Sept. 23, 2019).

⁸ See <https://www.publicjustice.net/trial-lawyer-year-award/> (last visited Sept. 23, 2019).

implementation of state and federal water quality and wildlife laws, and as necessary, directly initiates enforcement actions on behalf of itself and its members. Accordingly, EcoRights has no commercial interest in the information requested. EcoRights seeks the information solely to determine the extent of EPA's compliance with the Clean Water Act and Safe Drinking Water Act mandates and to assess the basis for its statements in the Letter. This information will therefore aid in EcoRights' efforts to protect the environment.

EcoRights has no financial interest in the information sought or any enforcement actions that may result. EcoRights' goal in urging enforcement of environmental laws is not private financial gain, but rather vindication of the larger public interest in ensuring that the EPA is operating in such a way that it can achieve compliance with environmental laws designed to protect our environment, wildlife, health, and natural resources.

(6) The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

EcoRights has no commercial interest in the requested information, as discussed above. Accordingly, the identified public interest in the disclosure of the requested information discussed above necessarily outweighs any commercial interest in this request. For the above reasons, EcoRights respectfully requests a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107 for all copying costs, mailing costs, and other costs related to locating and tendering the documents.

In the event that EPA denies EcoRights a fee waiver, please send a written explanation for the denial along with a cost estimate. Please contact us for authorization before incurring any costs in excess of \$25.


I look forward to your determination on this FOIA request within twenty days, as required by FOIA, 5 U.S.C. § 552(a)(6)(A)(i), and 40 C.F.R. § 2.104. The twenty-day statutory deadline is also applicable to EcoRights' fee waiver request. *See, e.g., Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003) (finding where an agency "fails to answer the [fee waiver] request within twenty days," judicial review is appropriate).

Please direct all correspondence and responsive records to:

Christopher Sproul
5135 Anza Street
San Francisco, CA 94121
(415) 533-3375
Fax: (415) 358-5695
E-mail: csproul@enviroadvocates.com

Thank you for your attention to this request. If you have any questions about the requested documents or the requested fee waiver, please do not hesitate to contact me at the phone or email below.

Sincerely,

A handwritten signature in cursive script that reads "Christopher a. sproul".

Christopher Sproul
Counsel for EcoRights